UTAH CHAPTER SIERRA CLUB ET AL.

IBLA 91-234 Decided August 8, 1991

Appeal from a decision of the Utah State Office, Bureau of Land Management, affirming the Moab District Manager's finding that approval of an application for permit to drill would cause no significant impacts. U 91-4.

Affirmed.

1. National Environmental Policy Act of 1969: Environ-mental Statements--Oil and Gas Leases: Drilling

   The Department of the Interior has determined, as a general matter, that APD approval for exploratory drilling prior to the first confirmation well is an action categorically excluded from the NEPA process. The effect of a categorical exclusion is to eliminate the necessity for preparation of an EA. Individual actions within a categorical exclusion may, however, be excepted under certain circumstances, and require preparation of an environmental document.

2. National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Discovery--Oil and Gas Leases: Drilling

   An exploratory well is a well drilled in unproven or semi-proven territory for the purpose of ascertaining the presence underground of a commercial petroleum deposit. Whether a well is exploratory and, accordingly, whether the Department's categorical exclusion for APD approval of an exploratory well applies, is committed to BLM's informed discretion.

3. National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Oil and Gas Leases: Drilling

   An EA prepared by BLM to consider the impacts of the grant of an APD for an exploratory well will be

> affirmed on appeal if the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination is reasonable. A party challenging the determination must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's decision if it is reasonable and supported by the record on appeal.

APPEARANCES: Christine Osborn and Ken Rait, Salt Lake City, Utah, for appellants; Charles L. Kaiser, Esq., Denver, Colorado, for Chevron U.S.A., Inc.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

The Utah Chapter Sierra Club and the Southern Utah Wilderness Alli-ance have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated March 11, 1991, affirming the Moab District Manager's finding that the grant of an application for permit to drill (APD) would cause no significant impacts. 1/ The APD at issue was filed by Chevron U.S.A., Inc., in June 1990 to obtain BLM approval to drill the Range Creek #3-4 well on lease U 30276 in sec. 4, T. 18 S., R. 16 E., Salt Lake Meridian. 2/ The APD has not as yet been approved, but BLM has concluded that Chevron's Range Creek #3-4 well will be allowed to proceed. The primary objective of this well is the Basal Dakota formation and, secondarily, the Upper Dakota and Buckhorn formations.

BLM reached its finding of no significant impact (FONSI) on December 3, 1990, after having reviewed Environmental Assessment (EA) UT-066-90-29 describing the impacts of Chevron's well. 3/ The EA specifically considered the impacts of access to the drill site, construction of the well pad, and the drilling and completion of the Range Creek #3-4 well (EA UT-066-90-29, November 1990, at 1-6). BLM found that approval of Chevron's APD did not automatically trigger additional development. If commercial quantities of gas were discovered as a result of this

1/ A request for stay accompanied appellants' notice of appeal. Our resolution of the merits of this appeal removes the need for specific consideration of this motion.

2/ Lease U 30276 was issued for 2,559.56 acres in Emery County, Utah, effective July 1, 1975. The lease describes the following lands: Secs. 4 and 5 (all), NE¼, E½ NW¼, E½ SE¼ sec. 8; sec. 9 (all), and E½ sec. 21, T. 18 S., R. 16 E., Salt Lake Meridian.

3/ BLM's finding applies to Chevron's proposal to drill the Range Creek #3-4 well, as modified by two alternatives (the "Camp" and "Range Creek Water Supply") addressed in the EA.

exploratory well, BLM stated, it would prepare additional environmental documents to consider the impacts of full field development. Id.

In their statement of reasons (SOR), appellants contend that BLM erred in failing to prepare an environmental impact statement (EIS) to examine the effects of full field development. Appellants further con-tend that in conjunction with a full field development scenario, other significant impacts caused by drilling the Range Creek #3-4 well should have been examined in an EIS.

Key to appellants' first argument is BLM's characterization of the Range Creek #3-4 well as an exploratory well. Appellants dispute this, pointing out that four wells have been drilled, albeit "with little success," in the Bighorn Benches, the situs of Chevron's well (SOR, May 7, 1991, at 3). Extensive seismic exploration has also occurred, and a known geologic structure (KGS) has been identified in secs. 5 and 8, adjacent to the drill site. Id.

The importance of this characterization is made plain by Michael Gold (On Reconsideration), 115 IBLA 218 (1990), 4/ and by BLM Manual section H-3160-1, appellants state. This Manual provision requires the agency, upon the filing of an APD for the first confirmation well in a newly discovered field, to prepare an EA analyzing the cumulative impacts of full field development. The Range Creek #1 well, by virtue of its producible quantities of gas, serves as the discovery well for the instant field, appellants contend. This well tested at 2 MMCFD (million cubic feet gas per day) and qualifies as a successful test well for the Range Creek II Unit, of which Chevron's lease U 30276 is a part (SOR at 4). Unitization of the area further demonstrates Chevron's belief that the underlying formation is potentially productive for natural gas and logically subject to development, appellants maintain.

As additional legal support, appellants cite Park County Resource Council, Inc. v. U.S. Department of Agriculture, 817 F.2d 609, 623 (10th Cir. 1987), which held that "an APD for a specific site may trigger the need for a broader-based EIS, evaluating both the past and future environmental effects of the site-specific drilling, as well as the regional cumulative effects of drilling a particular site in light of other regional development."

In the alternative, appellants argue that regardless of whether previous or current wells are categorized as exploratory or developmental,

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4/ This case and its predecessor, Michael Gold, 108 IBLA 231 (1989), were reviewed by the Secretary of the Interior, who affirmed, in part, and modified, in part, these decisions on June 25, 1991. Since we determine that this well is exploratory in nature, the Gold decisions are not instructive to this appeal. Even were these cases applicable, because we review this appeal based on the particular facts pertinent to this environmental review, we implicitly follow the Secretary's decision.

the fact remains that substantial drilling has taken place in the unit without the benefit of a regional development plan or analysis. By continuing to operate under the assumption that the Range Creek #3-4 well is merely another exploratory well, BLM has abrogated its responsibility to analyze cumulative impacts and anticipate future development within the sensitive environment of the Bighorn Benches, appellants charge.

[1] We begin our inquiry by noting that the Department of the Interior has determined, as a general matter, that APD approval for exploratory drilling prior to the first confirmation drilling is an action categorically excluded from the National Environmental Policy Act (NEPA) process. 516 DM 6, Appendix 5.4D(2)(d). Under 40 CFR 1508.4, the effect of a categorical exclusion is to eliminate the necessity for preparation of an EA. Glacier-Two Medicine Alliance, 88 IBLA 133, 140 (1985). Individual actions within a categorical exclusion may, however, be excepted under certain circumstances, Colorado Open Space Council, 73 IBLA 226, 231 (1983), and require preparation of an environmental document. 516 DM 2.3A(3). Recognizing that it is possible that exploration activities may, in certain circumstances, significantly affect the environment, BLM prudently considered this question by conducting an EA.

If Chevron's well is a confirmation well or development well, BLM Manual section H-3160-1 calls for an analysis of full field development. Because it is clear that EA UT-066-90-29 is inadequate for this purpose,
we next inquire whether appellants have shown that BLM erred in characterizing Chevron's Range Creek #3-4 well as an exploratory well.

Appellants regard the Range Creek #1 well as the discovery well for the instant field. The record indicates that this well was completed on December 26, 1982, in the NE¼ sec. 6, T. 18. S., R. 16 E., Salt Lake Meridian, within the Range Creek Unit. 5/ Originally completed in the Leadville formation, the well was later plugged back to the Basal Dakota formation, where it tested at 2 MMCFD. These results caused BLM to classify nearby secs. 5-8 as within a KGS. The record further reveals that
on December 26, 1982, the same day that Chevron's Range Creek #1 well was completed, lease U 30276 was determined by BLM to be held by production. We conclude from this coincidence of events that the Range Creek #1 well achieved production in paying quantities. 30 U.S.C. § 226(m) (1988).

Three other wells have been drilled in the general area, two of which have been plugged and abandoned without production. One such well, the Norris Federal #1, was re-entered in the Dakota formation after the Range Creek #1 completion, and tested that formation at 0.2 MMCFD. It has now been plugged and abandoned for a second time. 6/ No test results are available for the third well, drilled by Gulf in 1984 in sec. 1, T. 18 S., R. 15. E.

5/ This well is outside lease U 30276.
6/ Also plugged and abandoned (1962) was the Range Creek #1-27, drilled by Pacific in sec. 27, T. 17 S., R. 16 E., Salt Lake Meridian.

The EA states at page 1-5 that Gulf regarded the Range Creek #1 well as "not economically feasible." It is reasonably clear from the above facts, however, that this well, which is presently shut-in for want of a pipeline, is responsible for extending the life of lease U 30276 and other unit leases beyond their customary 10-year term. The well is also responsible for the KGS classification made by BLM. Moreover, Gulf thought enough about the results encountered by the Range Creek #1 well to reenter its previously plugged and abandoned Norris Federal #1.

[2] An exploratory well is a well drilled in unproven or semi-proven territory for the purpose of ascertaining the presence underground of a commercial petroleum deposit. 8 Williams & Meyers, Oil and Gas Law 334 (1987); Southern Utah Wilderness Alliance, 108 IBLA 318, 324 n.4 (1989). The fact that an exploratory well may be drilled in "semi-proven" terri-tory suggests that this term is not limited to the first well disclosing a commercial petroleum deposit in a given field.

Our view of BLM Manual section H-3160-1 reveals this same inference. As noted above, this section directs BLM to prepare an EA analyzing the cumulative impacts of full field development when an APD is filed for the first confirmation well in a newly discovered field. A "confirmation well" is loosely defined, the section states, and is usually construed as "the second well drilled after a discovery." This construction also admits of the following caveat: "However, one or two additional wells after the discovery well is completed may be permitted with a CER [categorical exclusion review], if these are needed to better define the extent of the discovery." 7/

EA UT-066-90-29 sets forth the purpose of the Range Creek #3-4 well in these terms at page 1-5:

> Since acquiring the lease, Chevron has reevaluated the Range Creek Unit. Gulf's initial exploration play in the Unit was based on seismic information that Gulf had acquired. The seismic information suggested two lobes of the Dakota with closure contained within the Range Creek Unit area. In order to more clearly define the Dakota Formation structure, Chevron collected additional seismic information in 1989. The new seismic information changed the interpretation of the Dakota structure top indicating that instead of two separate lobes, the Dakota Formation is actually a single structure across the Unit with up to 400 feet of closure at the crest. [8/] To validate the revised structural interpretation and more importantly

7/ This review examines whether an individual action within a categorical exclusion may nevertheless require preparation of an environmental document. Ten criteria are set forth at 516 DM 2 Appendix 2 to guide this review.

8/ BLM states in its decision of Mar. 11, 1991, that this seismic data rendered "premature" two prior statements that it had made regarding the need for an examination of full field development. In a letter to Chevron

> to gather information regarding the reservoir quality of the Dakota sandstones, Chevron has determined that it is necessary to drill an additional well (Range Creek #3-4) at a location that is higher on the Dakota structure.
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> Chevron's Range Creek #3-4 well is considered an explora-tory well. There are no guarantees that the well will reveal commercial quantities of hydrocarbons. Although several wells have already been drilled in the Unit, none have been produced. Chevron believes the reason for the lack of success with exist-ing exploratory wells is a result of the inability to predict the lateral variation in reservoir quality (i.e., porosity and permeability) in the Dakota sandstones.
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> If Chevron's Range Creek #3-4 well is successful, reason-able scenarios regarding future development in the Unit can be completed. However, without acquiring additional information regarding the quality and quantity (if any) of gas reserves in the Unit, scenarios of future development would, at this time, be completely speculative.

Based upon our view of the above-cited sections from the BLM Manual, Williams and Meyers, and EA UT-066-90-29, we find that appellants have not demonstrated error in BLM's characterization of the Range Creek #3-4 well as an exploratory well. No authority cited by appellants limits the term "exploratory well" to that first well disclosing a commercial petroleum deposit in a field. To the contrary, the term may describe a well in "semi-proven" territory or "one or two additional wells after the discovery well." This characterization is necessarily committed to BLM's informed discretion and will not be reversed by the Board absent an abuse of that discretion. Upon review of the record, we do not find an abuse of agency discretion.

[3] Having concluded that appellants have not shown error in BLM's characterization of the Range Creek #3-4 well as exploratory, there nevertheless remains the question whether BLM's EA was sufficient or, as appellants contend, should have triggered an EIS discussing full field

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fn. 8 (continued)
dated Oct. 17, 1989, BLM stated that "due to the development nature of Chevron's proposed Range Creek 3-7 well within the [Range Creek II] unit, BLM would need to conduct a high level environmental assessment or environmental impact statement to address impacts of full field development in this area." (Emphasis added.) (Appellants understand the Range Creek #3-4 well to have replaced the Range Creek #3-7 well as the first unit obligation well for this unit.) EA UT-066-89-37, prepared in anticipation of Chevron's geophysical activity in the Bighorn Benches, stated: "It has been determined that an EIS would need to be completed before any exploratory wells could be drilled."

development. Glacier-Two Medicine Alliance, supra, holds that an EA, prepared by BLM to consider the impacts of the grant of an APD for an exploratory well, need not consider full field development if BLM has retained the authority to bar surface-disturbing activities whose impacts, even with mitigating measures, would be unacceptable. See also Sierra Club, 104 IBLA 76, 86 (1988).

Our review of the stipulations accompanying lease U 30276 reveals that BLM has retained the right to approve any drilling, construction, or other operation on the leased lands that would disturb the surface or otherwise affect the environment. We find too that BLM has retained the right to subject these activities to such reasonable conditions, not inconsistent with the purposes of the lease, as it may require to protect the surface of the leased lands and environment.

Similar stipulations appeared in Sierra Club Legal Defense Fund, 84 IBLA 311, 322, 92 I.D. 37, 43 (1985), and these stipulations, in conjunction with a further stipulation focusing on endangered plants and animals, were found to effectively "condition surface occupancy upon completion of an EA and/or EIS in the context of a site-specific plan of operations and a finding that any impact is either mitigable or acceptable." Id. at 326, 92 I.D. at 45. We recognized there that a lessee could argue that the surface-disturbance stipulations only envisioned restrictions reasonably consistent with development of oil and gas on the leasehold, but we commented that such an interpretation would clearly be inconsistent with the Department's obligations under NEPA, 42 U.S.C.
§ 4321 (1988), and the Endangered Species Act, 16 U.S.C. § 1531 (1988).
The surface-disturbance stipulations, we held, must be construed in such
a manner as will import to them a lawful effect, rather than an unlawful effect. 84 IBLA at 326, 92 I.D. at 46.

Similarly in the instant case, we read Chevron's lease U 30276, its accompanying stipulations, Chevron's APD, and its accompanying conditions of approval in such a manner as will impart to them a lawful effect. Any surface-disturbing operation beyond that authorized by the APD and its conditions of approval must be subject to BLM's prior approval. Given this control, BLM need not prepare an environmental document analyzing the impacts of full field development at this time. Of particular importance to our decision is the nature of the action being contemplated. The permit being issued by BLM pursuant to the APD is temporary, it allows only the drilling of an exploratory well and related activities, all of which will cease by mid-September 1991. Should this well prove to be a dry one, reclamation of this area will leave virtually no trace of its existence. Should this well prove to be a potential producing well, BLM will then be able to conduct further environmental review before any additional activities are authorized under this lease. This factor, together with the rigorous EA conducted by BLM on an activity that is normally categorically excluded from NEPA review, show that BLM has taken the required "hard look" at this proposed action and correctly concluded that it is not an "irretrievable commitment of resources that will significantly affect the human environment."

The remainder of appellants' SOR is devoted to the argument that a number of resource issues meet the criteria for significance established by 40 CFR 1508.27 and warrant preparation of an EIS. Among these issues are the unique characteristics of the Bighorn Benches (40 CFR 1508.27(b)(3)), the highly controversial nature of the effects of the proposed action on the human environment (40 CFR 1508.27(b)(4)), the degree to which the proposed action may establish a precedent for future actions (40 CFR 1508.27(b)(6)), and the cumulative impacts of Chevron's Range Creek #3-4 well (40 CFR 1508.27(b)(7)).

In Southern Utah Wilderness Alliance, 114 IBLA 326, 332 (1990), we held that a determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination is reasonable. A party challenging the determination must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Id. Mere differences of opinion provide no basis for reversal of BLM's decision if it is reasonable and supported by the record on appeal. Id. Our review of appellants' SOR does not disclose any fatal defect in EA UT-066-90-29.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

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James L. Byrnes
Administrative Judge

I concur:

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Franklin D. Arness
Administrative Judge